



General Assembly

January Session, 2013

Substitute Bill No. 6419



AN ACT EXTENDING THE FORECLOSURE MEDIATION PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-31l of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2013*):

3 (a) Prior to July 1, [2014] 2016: (1) Any action for the foreclosure of a
4 mortgage on residential real property with a return date during the
5 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
6 the provisions of subsection (b) of this section, and (2) any action for
7 the foreclosure of a mortgage on (A) residential real property with a
8 return date during the period from July 1, 2009, to June 30, [2014] 2016,
9 inclusive, or (B) real property owned by a religious organization with a
10 return date during the period from October 1, 2011, to June 30, [2014]
11 2016, inclusive, shall be subject to the provisions of subsection (c) of
12 this section.

13 (b) (1) Prior to July 1, 2012, when a mortgagee commences an action
14 for the foreclosure of a mortgage on residential real property with a
15 return date during the period from July 1, 2008, to June 30, 2009,
16 inclusive, the mortgagee shall give notice to the mortgagor of the
17 foreclosure mediation program established in section 49-31m by
18 attaching to the front of the foreclosure complaint that is served on the
19 mortgagor: (A) A copy of the notice of the availability of foreclosure
20 mediation, in such form as the Chief Court Administrator prescribes,

21 and (B) a foreclosure mediation request form, in such form as the Chief
22 Court Administrator prescribes.

23 (2) Except as provided in subdivision (3) of this subsection, a
24 mortgagor may request foreclosure mediation by submitting the
25 foreclosure mediation request form to the court and filing an
26 appearance not more than fifteen days after the return date for the
27 foreclosure action. Upon receipt of the foreclosure mediation request
28 form, the court shall notify each appearing party that a foreclosure
29 mediation request form has been submitted by the mortgagor.

30 (3) The court may grant a mortgagor permission to submit a
31 foreclosure mediation request form and file an appearance after the
32 fifteen-day period established in subdivision (2) of this subsection, for
33 good cause shown, except that no foreclosure mediation request form
34 may be submitted and no appearance may be filed more than twenty-
35 five days after the return date.

36 (4) No foreclosure mediation request form may be submitted to the
37 court under this subsection on or after July 1, 2012.

38 (5) If at any time on or after July 1, 2008, but prior to July 1, 2012, the
39 court determines that the notice requirement of subdivision (1) of this
40 subsection has not been met, the court may, upon its own motion or
41 upon the written motion of the mortgagor, issue an order that no
42 judgment may enter for fifteen days during which period the
43 mortgagor may submit a foreclosure mediation request form to the
44 court.

45 (6) Notwithstanding any provision of the general statutes or any
46 rule of law to the contrary, prior to July 1, 2012, no judgment of strict
47 foreclosure nor any judgment ordering a foreclosure sale shall be
48 entered in any action subject to the provisions of this subsection and
49 instituted by the mortgagee to foreclose a mortgage on residential real
50 property unless: (A) Notice to the mortgagor has been given by the
51 mortgagee in accordance with subdivision (1) of this subsection and

52 the time for submitting a foreclosure mediation request form has
53 expired and no foreclosure mediation request form has been
54 submitted, or if such notice has not been given, the time for submitting
55 a foreclosure mediation request form pursuant to subdivision (2) or (3)
56 of this subsection has expired and no foreclosure mediation request
57 form has been submitted, or (B) the mediation period set forth in
58 subdivision (b) of section 49-31n, as amended by this act, has expired
59 or has otherwise terminated, whichever is earlier.

60 (7) None of the mortgagor's or mortgagee's rights in the foreclosure
61 action shall be waived by the mortgagor's submission of a foreclosure
62 mediation request form to the court.

63 (c) (1) Prior to July 1, [2014] 2016, when a mortgagee commences an
64 action for the foreclosure of a mortgage on residential real property
65 with a return date on or after July 1, 2009, or, with respect to real
66 property owned by a religious organization, a return date on or after
67 October 1, 2011, the mortgagee shall give notice to the mortgagor of
68 the foreclosure mediation program established in section 49-31m by
69 attaching to the front of the writ, summons and complaint that is
70 served on the mortgagor: (A) A copy of the notice of foreclosure
71 mediation, in such form as the Chief Court Administrator prescribes,
72 (B) a copy of the foreclosure mediation certificate form described in
73 subdivision (3) of this subsection, in such form as the Chief Court
74 Administrator prescribes, (C) a blank appearance form, in such form as
75 the Chief Court Administrator prescribes, and (D) with respect to an
76 action for the foreclosure of a mortgage on residential real property
77 with a return date on or after October 1, 2011, a mediation information
78 form and a notice containing contact information for authority-
79 approved consumer credit counseling agencies, which form and notice
80 shall be in such form as the Chief Court Administrator prescribes. Such
81 mediation information form shall be designed to elicit current financial
82 information and such other nonfinancial information from the
83 mortgagor as the Chief Court Administrator, in consultation with
84 representatives from the banking industry and consumer advocates,

85 determines will be useful to the mediation process. The instructions to
86 the mediation information form shall explain that the completed
87 mediation information form, along with accompanying documentation
88 reasonably requested from the mortgagor by way of such instructions,
89 shall be delivered to the mortgagee's counsel not later than fifteen
90 business days prior to the date of the initial mediation session, as
91 identified in the notice provided pursuant to subdivision (2) of
92 subsection (c) of section 49-31n, as amended by this act.

93 (2) The court shall issue a notice of foreclosure mediation described
94 in subdivision (3) of this subsection to the mortgagor not later than the
95 date three business days after the date the mortgagee returns the writ
96 to the court.

97 (3) The notice of foreclosure mediation shall instruct the mortgagor
98 to file the appearance and foreclosure mediation certificate forms with
99 the court not later than the date fifteen days from the return date for
100 the foreclosure action. Such notice shall remind the mortgagor to
101 deliver the completed mediation information form and the
102 accompanying documentation described in subdivision (1) of this
103 subsection and encourage such delivery in advance of the required
104 date. The mediation information form and accompanying
105 documentation shall not, without the explicit written instruction of the
106 mortgagor, be publicly available. Such notice shall be accompanied by
107 materials from the Department of Banking, as prescribed by the Chief
108 Court Administrator, which shall describe the community-based
109 resources available to the mortgagor, including authority-approved
110 housing counseling agencies that may assist with preparation of the
111 mediation information form and application for mortgage assistance
112 programs. The foreclosure mediation certificate form shall require the
113 mortgagor to provide sufficient information to permit the court to
114 confirm that the defendant in the foreclosure action is a mortgagor,
115 and to certify that said mortgagor has sent a copy of the mediation
116 certificate form to the plaintiff in the action.

117 (4) Upon receipt of the mortgagor's appearance and foreclosure

118 mediation certificate forms, and provided the court confirms the
119 defendant in the foreclosure action is a mortgagor and that said
120 mortgagor has sent a copy of the mediation certificate form to the
121 plaintiff, the court shall schedule a date for foreclosure mediation in
122 accordance with subsection (c) of section 49-31n, as amended by this
123 act. The court shall issue notice of such mediation date to all appearing
124 parties not earlier than the date five business days after the return date
125 or by the date three business days after the date on which the court
126 receives the mortgagor's appearance and foreclosure mediation
127 certificate forms, whichever is later, except that if the court does not
128 receive the appearance and foreclosure mediation certificate forms
129 from the mortgagor by the date fifteen days after the return date for
130 the foreclosure action, the court shall not schedule such mediation.

131 (5) Notwithstanding the provisions of this subsection, the court may
132 refer a foreclosure action brought by a mortgagee to the foreclosure
133 mediation program at any time, provided the mortgagor has filed an
134 appearance in said action and further provided the court shall, not
135 later than the date three business days after the date on which it makes
136 such referral, send a notice to each appearing party scheduling the first
137 foreclosure mediation session for a date not later than the date thirty-
138 five days from the date of such referral.

139 (6) Notwithstanding any provision of the general statutes or any
140 rule of law, prior to July 1, [2014] 2016, (A) for the period of time which
141 shall not exceed eight months from the return date, no mortgagee or
142 mortgagor shall make any motion, request or demand with respect to
143 the other, except those motions, requests or demands that relate to the
144 mediation program described in section 49-31m and the mediation
145 sessions held pursuant to such program, provided (i) a mortgagor
146 seeking to contest the court's jurisdiction may file a motion to dismiss
147 and the mortgagee may object to such motion to dismiss in accordance
148 with applicable law and the rules of the courts, and (ii) if the
149 mortgagor elects to make any other motion, request or demand with
150 respect to the mortgagee, the eight-month limit shall no longer apply

151 to either party; and (B) no judgment of strict foreclosure nor any
152 judgment ordering a foreclosure sale shall be entered in any action
153 subject to the provisions of this subsection and instituted by the
154 mortgagee to foreclose a mortgage on residential real property or real
155 property owned by a religious organization unless: (i) The mediation
156 period set forth in subsection (c) of section 49-31n, as amended by this
157 act, has expired or has otherwise terminated, whichever is earlier, and,
158 if fewer than eight months has elapsed from the return date at the time
159 of termination, fifteen days have elapsed since such termination, or (ii)
160 the mediation program is not otherwise required or available. Nothing
161 in this subdivision shall affect any motion made or any default or
162 judgment entered on or before June 30, 2011.

163 (7) With respect to foreclosure actions with a return date on or after
164 July 1, 2011, notwithstanding any provision of the general statutes or
165 any rule of law to the contrary, the mortgagee shall be permitted, on or
166 before July 1, [2014] 2016, and following the eight-month or fifteen-day
167 period described in subdivision (6) of this subsection, to
168 simultaneously file, as applicable, (A) a motion for default, and (B) a
169 motion for judgment of strict foreclosure or a motion for judgment of
170 foreclosure by sale with respect to the mortgagor in the foreclosure
171 action.

172 (8) None of the mortgagor's or mortgagee's rights in the foreclosure
173 action shall be waived by participation in the foreclosure mediation
174 program.

175 Sec. 2. Section 49-31n of the general statutes is repealed and the
176 following is substituted in lieu thereof (*Effective July 1, 2013*):

177 (a) Prior to July 1, [2014] 2016: (1) Any action for the foreclosure of a
178 mortgage on residential real property with a return date during the
179 period from July 1, 2008, to June 30, 2009, inclusive, shall be subject to
180 the provisions of subsection (b) of this section, and (2) any action for
181 the foreclosure of a mortgage on (A) residential real property with a
182 return date during the period from July 1, 2009, to June 30, [2014] 2016,

183 inclusive, or (B) real property owned by a religious organization with a
184 return date during the period from October 1, 2011, to June 30, [2014]
185 2016, inclusive, shall be subject to the provisions of subsection (c) of
186 this section.

187 (b) (1) For any action for the foreclosure of a mortgage on residential
188 real property with a return date during the period from July 1, 2008, to
189 June 30, 2009, inclusive, the mediation period under the foreclosure
190 mediation program established in section 49-31m shall commence
191 when the court sends notice to each appearing party that a foreclosure
192 mediation request form has been submitted by a mortgagor to the
193 court, which notice shall be sent not later than three business days after
194 the court receives a completed foreclosure mediation request form. The
195 mediation period shall conclude not more than sixty days after the
196 return date for the foreclosure action, except that the court may, in its
197 discretion, for good cause shown, (A) extend, by not more than thirty
198 days, or shorten the mediation period on its own motion or upon
199 motion of any party, or (B) extend by not more than thirty days the
200 mediation period upon written request of the mediator.

201 (2) The first mediation session shall be held not later than fifteen
202 business days after the court sends notice to all parties that a
203 foreclosure mediation request form has been submitted to the court.
204 The mortgagor and mortgagee shall appear in person at each
205 mediation session and shall have authority to agree to a proposed
206 settlement, except that (A) if the mortgagee is represented by counsel,
207 the mortgagee's counsel may appear in lieu of the mortgagee to
208 represent the mortgagee's interests at the mediation, provided such
209 counsel has the authority to agree to a proposed settlement and the
210 mortgagee is available (i) during the mediation session by telephone,
211 and (ii) to participate in the mediation session by speakerphone,
212 provided an opportunity is afforded for confidential discussions
213 between the mortgagee and mortgagee's counsel, and (B) following the
214 initial mediation session, if there are two or more mortgagors, only one
215 mortgagor shall appear in person at each subsequent mediation

216 session unless good cause is shown, provided the other mortgagors are
217 available (i) during the mediation session, and (ii) to participate in the
218 mediation session by speakerphone, provided an opportunity is
219 afforded for confidential discussions among the mortgagors and such
220 mortgagors' counsel. The court shall not award attorney's fees to any
221 mortgagee for time spent in any mediation session if the court finds
222 that such mortgagee has failed to comply with this subdivision, unless
223 the court finds reasonable cause for such failure.

224 (3) Not later than two days after the conclusion of the first
225 mediation session, the mediator shall determine whether the parties
226 will benefit from further mediation. The mediator shall file with the
227 court a report setting forth such determination and mail a copy of such
228 report to each appearing party. If the mediator reports to the court that
229 the parties will not benefit from further mediation, the mediation
230 period shall terminate automatically. If the mediator reports to the
231 court after the first mediation session that the parties may benefit from
232 further mediation, the mediation period shall continue.

233 (4) If the mediator has submitted a report to the court that the
234 parties may benefit from further mediation pursuant to subdivision (3)
235 of this subsection, not more than two days after the conclusion of the
236 mediation, but not later than the termination of the mediation period
237 set forth in subdivision (1) of this subsection, the mediator shall file a
238 report with the court describing the proceedings and specifying the
239 issues resolved, if any, and any issues not resolved pursuant to the
240 mediation. The filing of the report shall terminate the mediation period
241 automatically. If certain issues have not been resolved pursuant to the
242 mediation, the mediator may refer the mortgagor to any appropriate
243 community-based services that are available in the judicial district, but
244 any such referral shall not cause a delay in the mediation process.

245 (5) The Chief Court Administrator shall establish policies and
246 procedures to implement this subsection. Such policies and procedures
247 shall, at a minimum, provide that the mediator shall advise the
248 mortgagor at the first mediation session required by subdivision (2) of

249 this subsection that: (A) Such mediation does not suspend the
250 mortgagor's obligation to respond to the foreclosure action; and (B) a
251 judgment of strict foreclosure or foreclosure by sale may cause the
252 mortgagor to lose the residential real property to foreclosure.

253 (6) In no event shall any determination issued by a mediator under
254 this program form the basis of an appeal of any foreclosure judgment.

255 (7) Foreclosure mediation request forms shall not be accepted by the
256 court under this subsection on or after July 1, 2012, and the foreclosure
257 mediation program shall terminate when all mediation has concluded
258 with respect to any applications submitted to the court prior to July 1,
259 [2014] 2016.

260 (8) At any time during the mediation period, the mediator may refer
261 a mortgagor who is the owner-occupant of one-to-four family
262 residential real property to the mortgage assistance programs, except
263 that any such referral shall not prevent a mortgagee from proceeding
264 to judgment when the conditions specified in subdivision (6) of
265 subsection (b) of section 49-31l, as amended by this act, have been
266 satisfied.

267 (c) (1) For any action for the foreclosure of a mortgage on residential
268 real property with a return date during the period from July 1, 2009, to
269 June 30, [2014] 2016, inclusive, or for any action for the foreclosure of a
270 mortgage on real property owned by a religious organization with a
271 return date during the period from October 1, 2011, to June 30, [2014]
272 2016, inclusive, the mediation period under the foreclosure mediation
273 program established in section 49-31m shall commence when the court
274 sends notice to each appearing party scheduling the first foreclosure
275 mediation session. The mediation period shall conclude not later than
276 the date sixty days after the return date for the foreclosure action,
277 except that the court may, in its discretion, for good cause shown, (A)
278 extend, by not more than thirty days, or shorten the mediation period
279 on its own motion or upon motion of any party, or (B) extend by not
280 more than thirty days the mediation period upon written request of

281 the mediator.

282 (2) The first mediation session shall be held not later than fifteen
283 business days after the court sends notice to each appearing party in
284 accordance with subdivision (4) of subsection (c) of section 49-31l, as
285 amended by this act. On and after October 1, 2011, the first mediation
286 session shall be held not later than thirty-five days after the court
287 sends notice to each appearing party in accordance with subdivision
288 (4) of subsection (c) of this section. On and after October 1, 2011, not
289 later than fifteen business days prior to the date of the initial mediation
290 session, the mortgagee shall deliver to the mortgagor (A) an account
291 history identifying all credits and debits assessed to the loan account in
292 the immediately preceding twelve-month period, and (B) the name,
293 business mailing address, electronic mail address, facsimile number
294 and direct telephone number of an individual able to process requests
295 to refinance or modify the mortgage loan at issue or otherwise take
296 action to avoid foreclosure of the mortgage. Any updates to the
297 information provided pursuant to subparagraph (B) of this subdivision
298 shall be provided reasonably promptly to the mortgagor and such
299 mortgagor's counsel. The mortgagor and mortgagee shall appear in
300 person at each mediation session and shall have authority to agree to a
301 proposed settlement, except that (i) if the mortgagee is represented by
302 counsel, the mortgagee's counsel may appear in lieu of the mortgagee
303 to represent the mortgagee's interests at the mediation, provided such
304 counsel has the authority to agree to a proposed settlement and the
305 mortgagee is available (I) during the mediation session by telephone,
306 and (II) to participate in the mediation session by speakerphone,
307 provided an opportunity is afforded for confidential discussions
308 between the mortgagee and mortgagee's counsel, and (ii) following the
309 initial mediation session, if there are two or more mortgagors, only one
310 mortgagor shall appear in person at each subsequent mediation
311 session unless good cause is shown, provided the other mortgagors are
312 available (I) during the mediation session, and (II) to participate in the
313 mediation session by speakerphone, provided an opportunity is
314 afforded for confidential discussions among the mortgagors and such

315 mortgagors' counsel. The court shall not award attorney's fees to any
316 mortgagee for time spent in any mediation session if the court finds
317 that such mortgagee has failed to comply with this subdivision, unless
318 the court finds reasonable cause for such failure.

319 (3) Not later than two days after the conclusion of the first
320 mediation session, the mediator shall determine whether the parties
321 will benefit from further mediation. The mediator shall file with the
322 court a report setting forth such determination and mail a copy of such
323 report to each appearing party. If the mediator reports to the court that
324 the parties will not benefit from further mediation, the mediation
325 period shall terminate automatically. If the mediator reports to the
326 court after the first mediation session that the parties may benefit from
327 further mediation, the mediation period shall continue. Either party's
328 failure to comply with the documentation requirements of this section
329 or section 49-31/, as amended by this act, shall not be grounds for
330 terminating the mediation period before a second mediation session is
331 conducted.

332 (4) If the mediator has submitted a report to the court that the
333 parties may benefit from further mediation pursuant to subdivision (3)
334 of this subsection, not more than two days after the conclusion of the
335 mediation, but not later than the termination of the mediation period
336 set forth in subdivision (1) of this subsection, the mediator shall file a
337 report with the court describing the proceedings and specifying the
338 issues resolved, if any, and any issues not resolved pursuant to the
339 mediation. The filing of the report shall terminate the mediation period
340 automatically. If certain issues have not been resolved pursuant to the
341 mediation, the mediator may refer the mortgagor to any appropriate
342 community-based services that are available in the judicial district, but
343 any such referral shall not cause a delay in the mediation process.

344 (5) The Chief Court Administrator shall establish policies and
345 procedures to implement this subsection. Such policies and procedures
346 shall, at a minimum, provide that the mediator shall advise the
347 mortgagor at the first mediation session required by subdivision (2) of

348 this subsection that: (A) Such mediation does not suspend the
349 mortgagor's obligation to respond to the foreclosure action beyond the
350 limited time frame described in subdivision (6) of subsection (c) of
351 section 49-31l, as amended by this act; and (B) a judgment of strict
352 foreclosure or foreclosure by sale may cause the mortgagor to lose the
353 residential real property or real property owned by a religious
354 organization to foreclosure.

355 (6) In no event shall any determination issued by a mediator under
356 this program form the basis of an appeal of any foreclosure judgment.

357 (7) The foreclosure mediation program shall terminate when all
358 mediation has concluded with respect to any foreclosure action with a
359 return date during the period from July 1, 2009, to June 30, [2014] 2016,
360 inclusive.

361 (8) At any time during the mediation period, the mediator may refer
362 a mortgagor who is the owner-occupant of one-to-four family
363 residential real property to the mortgage assistance programs, except
364 that any such referral shall not prevent a mortgagee from proceeding
365 to judgment when the conditions specified in subdivision (6) of
366 subsection (c) of section 49-31l, as amended by this act, have been
367 satisfied.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2013	49-31l
Sec. 2	July 1, 2013	49-31n

HSG Joint Favorable Subst. -LCO

APP Joint Favorable